

RECORD OF PROCEEDINGS
AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

IN THE MATTER OF:

DOCKET NUMBER: 97-00919

COUNSEL: NONE

DEC 4 1998

HEARING DESIRED: YES

APPLICANT REQUESTS THAT:

1. His nonselection for promotion to the grade of colonel, by the Calendar Year 1994 (CY94) promotion board, be set aside.
2. His Promotion Recommendation Form (PRF), AF Form 709, reviewed by the CY94 colonel promotion board, be upgraded to reflect a "Definitely Promote" recommendation.
3. His record be corrected to show he was promoted to the grade of colonel as if selected by the CY94 Central Colonel Board.
4. His records be corrected to reflect continuous active duty, since retirement, to include restoration of all pay, benefits, and any other entitlements, to include carryover of the maximum amount of leave for the period he was not on active duty.
5. In the applicant's response to the Air Force evaluations, he requests that the AFBCMR direct his record be corrected to reflect selection for promotion to the grade of colonel by the CY94 promotion board.

APPLICANT CONTENDS THAT:

At the time of his consideration for promotion to the grade of colonel, he was in one of the most promotable jobs a lieutenant colonel could hold as commander of an air refueling squadron at [REDACTED] Air Force Base (AFB), [REDACTED]. His home wing was located at [REDACTED] AFB, [REDACTED]. In effect, his unit was "out of sight, out of mind" which made his situation even more atypical. When the refueling assets were transferred to Air Mobility Command (AMC), he found himself in a new command. He was physically separated from his operations group commander and wing commander and even more geographically separated from the senior rater who ultimately determined his (applicant's) promotion recommendation. Applicant states that he found it was impossible for him to compete on a fair and equitable basis with his contemporaries.

Applicant's complete submission is attached at Exhibit A.

STATEMENT OF FACTS:

Applicant was appointed a second lieutenant in the Reserve of the Air Force on 27 March 1973 and ordered to extended active duty. He was subsequently appointed a first lieutenant in the Regular Air Force on 24 November 1976.

Applicant was considered and nonselected for promotion to the grade of colonel by the CY94A (11 Jul 94) Central Colonel Board In-The-Primary Zone (IPZ) .

Applicant's Officer Performance Report (OPR) profile, since promotion to the grade of lieutenant colonel, is as follows:

PERIOD PERIOD ENDING	EVALUATION OVERALL EVALUATION
28 Feb 90	Meets Standards
28 Feb 91	Meets Standards
28 Feb 92	Meets Standards
28 Feb 93	Meets Standards
# 28 Feb 94	Meets Standards

Top report at time of nonselection to the grade of colonel by the CY94A Central Colonel Board.

On 6 September 1994, applicant requested voluntary retirement to be effective 1 January 1995.

Applicant was relieved from active duty on 31 December 1994 and honorably retired effective 1 January 1995 under the provisions of AFI 36-3203 (Voluntary Retirement-Sufficient Service For Retirement) in the grade of lieutenant colonel. He served 22 years and 3 days of active service for retirement.

AIR FORCE EVALUATION:

The Evaluation Board Computer Support and Analysis Manager, HQ AFPC/DPPPEB, states that although the applicant alleges his senior rater was not familiar with his performance, AFR 36-10 allows a senior rater to use information from other reliable sources when accomplishing a PRF. Additionally, during the CY94 promotion cycle, "Top Promote" statements were neither encouraged nor prohibited by regulation. He provides no supporting documentation from his senior rater or Management Level Evaluation Board (MLEB) President indicating they would upgrade his promotion recommendation as a result of his appeal. The original PRF should stand since there is no evidence the

applicant received anything but fair and equitable treatment in the PRF process.

A complete copy of this evaluation is attached at Exhibit C.

The Chief of Operations, Selection Board secretariat, HQ AFPC/DPPB, reviewed the application and addresses applicant's contentions regarding "Defective Selection Boards." AFPC/DPPB does not agree with applicant's contentions that his promotion board was in violation of Sections 616 and 617, Title 10 U.S.C. He cites the Roane court decision concerning alleged violations and AFPC/DPPB defers the response to AFPC/JA.

A complete copy of this evaluation is attached at Exhibit D.

The Chief, Appeals and SSB Branch, HQ AFPC/DPPPA, states that the advisories from HQ AFPC/DPPPEB and HQ APRC/DPPB address all of the applicant's allegations and supporting documentation. This office has analyzed the applicant's record and attached a summary. They believe the record speaks for itself. Insufficient relevant evidence has been presented to demonstrate the existence of probable error or injustice regarding applicant's request for direct promotion to the grade of colonel. Other than his own opinions, the applicant has provided no substantiation to his allegations. They recommend applicant's requests be denied.

A complete copy of this evaluation, with attachment, is attached at Exhibit E.

The Superintendent, Retirements and Separation Division, HQ AFPC/DPPR, reviewed the application with regard to the effect of retirement issues if promoted to colonel. AFPC/DPPR makes no recommendation in applicant's case.

A complete copy of this evaluation, with attachments, is attached at Exhibit F.

The Senior Attorney-Advisor, HQ AFPC/JA, reviewed the application and states that it is AFPC/JA's opinion that the application should be denied. Applicant has failed to present relevant evidence of any error or injustice warranting relief.

A complete copy of the Air Force evaluation is attached at Exhibit G.

APPLICANT'S REVIEW OF AIR FORCE EVALUATION:

Applicant reviewed the Air Force evaluations and provided a response, with attachments, which is attached at Exhibit I.

THE BOARD CONCLUDES THAT:

1. The applicant has exhausted all remedies provided by existing law or regulations.
2. The application was timely filed.
3. Insufficient relevant evidence has been presented to demonstrate the existence of probable error or injustice. Applicant's numerous contentions concerning the statutory compliance of the central selection boards, the promotion recommendation appeal process and the legality of the special selection board (SSB) process, are duly noted. However, after a thorough review of the evidence of record and applicant's submission, we are not persuaded that his nonselection for promotion to the grade of colonel, by the **CY94** promotion board, should be set aside; that his promotion recommendation form (PRF), reviewed by the **CY94** colonel promotion board, be upgraded to a "Definitely Promote" recommendation; that his records be corrected to reflect continuous active duty since his separation; or, that he receive a direct promotion to the grade of colonel, as if promoted by the **CY94** colonel promotion board with back pay and benefits. We do not find applicant's assertions, in and by themselves, sufficiently persuasive to override the rationale provided by the Air Force. We therefore agree with the recommendations of the Air Force and adopt the rationale expressed as the basis for our decision that the applicant has failed to sustain his burden that he has suffered either an error or an injustice. Therefore, we find no compelling basis to recommend granting the relief sought.
4. The documentation provided with this case was sufficient to give the Board a clear understanding of the issues involved and a personal appearance, with or without counsel, would not have materially added to that understanding. Therefore, the request for a hearing is not favorably considered.

THE BOARD DETERMINES THAT:

The applicant be notified that the evidence presented did not demonstrate the existence of probable material error or injustice; that the application was denied without a personal appearance; and that the application will only be reconsidered upon the submission of newly discovered relevant evidence not considered with this application.

The following members of the Board considered this application in Executive Session on 14 October 1998, under the provisions of AFI 36-2603.

Mr. Thomas S. Markiewicz, Panel Chair
Mr. Charles E. Bennett, Member
Ms. Martha Maust, Member

The following documentary evidence was considered:

- Exhibit A. DD Form 149, dated 20 Mar 97, w/atchs.
- Exhibit B. Applicant's Master Personnel Records.
- Exhibit C. Letter, HQ AFPC/DPPPEB, dated 29 Apr 97.
- Exhibit D. Letter, HQ AFPC/DPPB, dated 8 May 97.
- Exhibit E. Letter, HQ AFPC/DPPPA, dated 20 May 97.
- Exhibit F. Letter, HQ AFPC/DPPR, dated 15 Jul 97.
- Exhibit G. Letter, HQ AFPC/JA, dated 28 Aug 97.
- Exhibit H. Letter, AFBCMR, dated 15 Sep 97.
- Exhibit I. Applicant's Letter, dated 8 Dec 97, w/atchs.


THOMAS S. MARKIEWICZ
Panel Chair